



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



March 16, 2022

Email: [bkleiner@earthjustice.org](mailto:bkleiner@earthjustice.org)

Briana Kleiner  
EarthJustice  
111 S. MLK Jr. Blvd  
Tallahassee, Florida 32301

REF: DOI-FWS-2021-003019

Dear Ms. Kleiner:

The United States Fish and Wildlife Service (FWS), Atlanta Regional FOIA office received your Freedom of Information Act (FOIA) request, dated March 16, 2021 and assigned it control number DOI-FWS-2021-003019. Please cite this number in any future communications with our office regarding your request. You requested the following:

- *All communication or correspondence between USFWS and Florida's Department of Environmental Protection ("FDEP") between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.*
- *All communication or correspondence between USFWS and the United States Army Corps of Engineers between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida.*
- *All communication or correspondence between USFWS and the U.S. Environmental Protection Agency ("EPA") between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.*
- *All communication or correspondence between USFWS and the National Marine Fisheries Service ("NMFS") between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.*
- *All internal records, communications, or correspondence between March 1, 2017, and January 21, 2021, regarding the transfer of authority over Clean Water Act Section 404 permitting in Florida. This request includes, for example, records relating to the technical assistance process and Section 7 consultation for assumption.*

## Response

We are writing today to partially respond to your request on behalf of the Fish and Wildlife Service. We previously partially responded to this request on July 9, 2021, July 16, 2021, September 24, 2021, and December 15, 2021 and informed you that we were continuing to search for and review additional records.

We have reviewed eight (8) records that are responsive to your request. We have enclosed six (6) files consisting of nine (9) pages, which are being released to you in their entirety. We have partially withheld two (2) documents pursuant to Exemptions 5 and 6 of the FOIA.

While processing your request, we located an additional one (1) document that primarily concern the Army Corps of Engineers (ACOE) and two (2) documents that belong to the Environmental Protection Agency (EPA). For these records, the ACOE and the EPA will issue a response directly to you. We are therefore referring these documents to these Agencies for their review and direct response to you.

You do not have to contact the ACOE or the EPA at this time, but should you need to do so in the future, you may do so at:

Army Corps of Engineers  
CESAJ-OC  
P.O. Box 4970  
Jacksonville, FL 32232-0019  
[foia-saj@usace.army.mil](mailto:foia-saj@usace.army.mil)  
Phone: (904) 232-2477  
Fax: (904) 232-3692

Environmental Protection Agency  
Regional Freedom of Information Officer  
U.S. EPA, Region 4  
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)  
Atlanta, GA 30303-8960  
(404) 562-9891

Tiffany Joseph, Fish and Wildlife Service, Government Information Specialist, is responsible for this denial. The following categories of preapproved withholdings were the subject of consultation with the Office of the Solicitor's Division of General Law and the Departmental FOIA Office: All .mil email addresses (in full) under Exemption 6.

### Exemption 5

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency." [5 U.S.C. § 552\(b\)\(5\)](#). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding one (1) page in part under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privilege: *Deliberative Process Privilege*

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to

operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege, such as: (1) assuring that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both pre-decisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both pre-decisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency's deliberative processes.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

#### Exemption 6

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." [5 U.S.C. § 552\(b\)\(6\)](#). We are withholding one (1) page in part under Exemption 6.

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information, consists of .mil addresses, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

The decision to withhold/deny this information was made by the undersigned and approved by Cathy Willis, FWS FOIA Officer, Division of Information Resources & Technology Management (IRTM). Helen Speights, Attorney-Advisor, in the Office of the Solicitor was consulted.

### **Mediation/Dispute Resolution**

If after contacting us as described below, you need further information or assistance with your request, you may wish to seek dispute resolution services from the Department's FOIA Public Liaison, Natasha Alcantara by email at [doifoiapublicliaison@sol.doi.gov](mailto:doifoiapublicliaison@sol.doi.gov).

If you need further information or assistance after contacting the Department's FOIA Public Liaison, you may wish to seek dispute resolution services from the Office of Government Information Services (OGIS). The 2007 FOIA amendments created the OGIS to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://www.archives.gov/ogis>  
Telephone: (202) 741-5770  
Fax: (202) 741-5769  
Toll-free: (877) 684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

### **Appeal Rights**

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this final response. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe this response is in error. You must also include with your appeal copies of all correspondence between you and FWS concerning your FOIA request, including your original FOIA request and this response. Failure to include with your appeal all correspondence between you and FWS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240  
Attn: FOIA/Privacy Act Appeals Office  
Telephone: (202) 208-5339  
Fax: (202) 208-6677  
Email: [FOIA.Appeals@sol.doi.gov](mailto:FOIA.Appeals@sol.doi.gov)

**Conclusion**

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See [5 U.S.C. 552\(c\)](#). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

We are continuing to search for and review additional files that are responsive to your request. We plan to provide our next release on or before April 30, 2022. If you have any questions regarding your request, you may contact me by email at [tiffany\\_joseph@fws.gov](mailto:tiffany_joseph@fws.gov).

Sincerely,

For Cathy Willis  
FWS FOIA Officer

Enclosures